

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA)	
)	No. 13-CR-10200-GAO
v.)	
)	
)	
DZHOKHAR TSARNAEV)	

**DEFENDANT’S MOTION TO RECONSIDER AND AMEND ORDER DENYING
THIRD MOTION FOR HEARING TO ADDRESS LEAKS BY LAW
ENFORCEMENT**

Defendant, Dzhokhar Tsarnaev, by and through counsel, hereby moves the Court to reconsider its Opinion and Order [DE 676] denying Defendant’s Third Motion for a Hearing to Address Leaks by Law Enforcement.

On the same day the Court issued its Order denying the defense motion, *Boston Magazine* published an article that claims to rely on actual FBI reports of interviews with Khairullozhan Matanov:

All of these details – and many more – are contained in FBI proffer reports obtained exclusively by *Boston Magazine*. The proffer reports are an FBI agent’s written account of multiple interviews with Matanov, whom the feds have charged with obstruction of justice in connection with the Boston Marathon investigation. Agents first interviewed Matanov in May 2013 and arrested him 12 months later. According to one of the reports, Matanov and Tamerlan “did not have secrets.”

See *Boston Magazine*, “Inside the Mind of a Killer” (December 2014).¹ Relying on these “FBI proffer reports,” the article paints a detailed picture of the actions of the

¹ Available at <<http://www.bostonmagazine.com/news/article/2014/11/25/inside-mind-killer-tamerlan-tsarnaev-matanov/>>.

Tsarnaev brothers and Matanov in the hours after the bombings. It is written by Michele McPhee, the same reporter whose *Newsweek* article was at issue in the Defendant's Third Motion, and who seems to have ready access to law enforcement sources and documents. *See* DE 616 at pp. 3-5.

Although yesterday's Order denied the defense request for a hearing at this time, it directed government counsel to require appropriate supervisory personnel in any law enforcement agency that has or is working on matters related to this case to communicate to those under their command that disclosure of non-public information must be avoided on pain of sanction. [DE 676]. Now, however, the stakes have increased. It appears that actual confidential FBI interview reports have been released, at least to *Boston Magazine* and/or journalist Michele McPhee. As a result, defense counsel seek reconsideration of the Court's November 25, 2014 Order denying a hearing, and in addition, request that the Court amend its Order to require government counsel to obtain affidavits from each of the relevant law enforcement supervisory personnel advising whether they or those under their command provided non-public investigative materials (including but not limited to the Matanov FBI interview reports), or other non-public investigative information, to any unauthorized persons or organizations, including *Boston Magazine* or other news outlets.

Respectfully submitted,
DZHOKHAR TSARNAEV
By his attorneys

/s/ Judy Clarke

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Certificate of Service

I hereby certify that this document filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non-registered participants on November 26, 2014.

/s/ Judy Clarke